IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 143 OF 2007

Ms.Sunanda Lakshman Gatlewar .. Applicant.

V/s.

Mayur Sanjeevan Naik .. Respondent.

Mr.Sanjeev J. Rairkar for the Applicant.

Mr.R.V. Govilkar for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : 05th JULY, 2007.

P.C. :-

. Heard. Admit. By consent, taken up for final disposal.

2. This revision petition is directed against the order of the learned 13th Joint Civil Judge, Sr.Dvn., Pune court passed below Exh. 12 in Special Civil Suit No. 184/2004. The respondent has filed the civil suit for recovery of a sum of money from the petitioner in respect of construction work carried out by the respondent for the petitioner. The particulars of the claim were as follows :

Rs.1,22,351=00 Being the balance amount of the

	construction work, carried out by the plaintiff for defendant, i.e. Rs. 87,000/- plus extra item work Bill of Rs.35,351/-.
Rs.0,14,987=00	Interest @ 21% per annum from 1st of June 2003 to 20th January 2004, i.e. the date of filing of the suit.
Rs.0,01,500=00	Notice Charges.
Rs.1,38,838=00	Grand Total.

3. In the suit, the petitioner made an application under section 8 of the Arbitration and Conciliation Act, 1996 and sought for an application of the arbitration clause and the reference of the dispute to the Arbitration. The arbitration clause reads as follows :

> "All dispute and differences of any kind whatever arising out of or in connection with the contract or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the Contract) shall be referred to and settled by the Architect who shall state his decision in writing. Such decision may be in

the form of a Final Certificate or otherwise. The decision of the Architect with respect of any of the excepted matters shall be final and without appeal. But if either the Owner or the Contractor be dissatisfied with the decision of the Architect on any matter, question or dispute of any kind (except any of the expected matters) or as to the withholding by the Architect of any certificate to which the Contractor may claim to be entitled then and in any such case either party (the owner or the Contractor) may within 28 days after receiving notice of such decision given a written notice to the other party through the Architect requiring that such matters in dispute be Arbitrated upon. Such written notice shall specify the matters which are in dispute and such dispute or difference of which such written notice has been given and no other shall be and is hereby referred to the Arbitration and final decision of a single Arbitrator being a Fellow of the Indian Institute of Architects to be agreed upon and appointed by both one parties or in case of disagreement as to the appointment of a single Arbitrator to the Arbitration of two Arbitrators both being Fellows of the Indian Institute of Architects one to be appointed by each party, which Arbitrators shall before taking upon themselves the burden of reference appoint an Umpire. The Arbitrator, the Arbitrators or the Umpire as the case may be shall have power to open up review and revise any certificate, opinion, decision, requisition or notice save in regard to the expected matters referred to in clause 55 and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid.

Upon every or any such reference the cost of and incidental to the reference and Award respectively shall be in the direction of the Arbitrator or Arbitrators or the Umpire as the case may be who may determine the amount thereof or direct the same to be taxed as between Attorneys and Client or as between party and party and shall direct by whom and whom and in what manner the same shall be borne and paid. This submission shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration Act 1940 or any

> modification thereof for the time being in force. The Award of the Arbitrator or Arbitrators or the Umpire as the case may be shall be final and binding on the parties. Such reference except as to the withholding by the Architect of any Certificates under clause 49 to which the Contractor claims to be entitled shall not be opened or entered upon until after the completion or alleged completion of the works or until after the practical cessation of the works arising from any cause unless with the written consent of the owner and the Contractor. Provided always that the owner shall not withhold the payment of an Interim Certificate not the Contractor except with the consent in writing of the Architect in any way delay the carrying out of the works by reason of any such matters, question or dispute being referred to Arbitration but shall proceed with the work with all due diligence and shall, until the decision of the Arbitrator or Arbitrators or the Umpire as the case may be, given abide by the decision of the Architect and no Award of the Arbitrator or Arbitrators or the Umpire as the case may be, shall relieve the Contractor of his obligations to adhere strictly to the Architects instructions with regard to the actual carrying out of the works. The owner and the Contractor hereby also agree that Arbitration under this Clause shall be a condition precedent to any right of action under the Contract.

4. The learned trial Judge has rejected the petitioner’s application for reference of the dispute to arbitration on the ground that the additional work, in respect of which the claim is made by the respondent, is not covered by the arbitration clause. Now admittedly, the contract was given by the petitioner to the respondent for construction of his bungalow. In the course of the construction of the bungalow, the petitioner asked for some additional construction work

in respect of the bungalow. Exact details of the additional work are not known at this stage. Suffice it to say further that there is no dispute that the work ordered by the petitioner was in addition to the work already ordered. Mr. Govilkar, the learned counsel for the respondent, however, strenuously contended that the additional work ordered by the petitioner must be construed as a separate contract, although not in writing. According to the learned counsel, any work in additional to what has already been executed or contemplated, construes a separate contract and cannot be said to be the work arising out of the original contract. It is not possible to accept the contention of the respondent. In this case, the arbitration clause clearly states as follows :

> "All dispute and differences of any kind whatever arising out of or in connection with the Contract or the carrying out of the works, whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the Contract; shall be referred to and settled by the Architect who shall state his decision in writing".

This arbitration clause is of a wide application. The additional work which is admittedly in respect of the same bungalow would clearly be the work which arises "out of" or "in connection" with the original contemplated work. It must be, therefore, construed to be the work, which must be referred to and settled by the Architect. The contention of the learned counsel for the respondent would have been acceptable if the case was that the additional work was not in respect of the original contemplated construction of the bungalow and was separate from it.

5. Mr.Govilkar, the learned counsel for the respondent further relied upon the following statements in the plaint.

> The cause of action also arose when the Plaintiff, at the request of the Defendant, completed and carried out the extra items work of Rs.35,351/- (Thirty Five Thousand Three Hundred Fifty One only), which was agreed to be paid by the Defendant, in presence of said Shri V.G.Deo, Architect and for which a Bill was raised.

The said statement does not show that the extra additional work do not arise out of the original work.

6. In the circumstances, the revision application is hereby allowed. The impugned order is hereby set

aside and the dispute in the civil suit is referred for decision of the arbitrator in accordance with the clause 56 of the agreement dated 5th of August, 2002.

(S.A.BOBDE,J.)

.....